IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 593 OF 1995

Parikh Paper Agencies Pvt. Ltd. .. Petitioner

Vs.

Snamp Pharma Pvt. Ltd. .. Respondents

Mr. Shehal Shah i/by Dhuru & Co. for Petitioner.

Mr. Chetan Mehta for Respondents.

CORAM : A.M. KHANWILKAR,J.
DATED : JUNE 22, 2005

P.C.

. Heard counsel for the parties.

. This petition is filed under Section 433 and 434 of the Companies Act for winding up of respondent company. According to Petitioner, the Petitioner entered into contract with respondent company on 13.10.1993 wherein it was agreed that the respondent company will supply to the Petitioner 2,56,000 tubes of "Lotos" New extra fresh toothpaste in Aluminium collapsible tubes with Indian printing at the agreed rate on terms and conditions referred in the said agreement. The said contract was amended from time to time. It is not necessary to advert to the nature of the amendment and the said activity except to mention

that the quantity of tubes to be supplied was doubled. From the Petition, it is seen that as agreed between the parties, the petitioner made advance payment to the suppliers in discharge of his obligation. The respondent company has acknowledged the fact that the Petitioner had made such advance payment. That position can be seen from letter issued by the respondent company on 9.5.1994 wherein it is acknowledged that the respondent company is facing financial difficulty and is making all efforts to make supply of the items as agreed. The respondent company has also shown willingness to pay interest @ 21% p.a. on the advance amount paid by the petitioner to the named supplier in the sum of Rs.5,40,025/-. In other words, the liability to pay the sum of Rs.6,44,968/- has been acknowledged by the respondent company and respondent company has also agreed to pay to the applicant, interest at the rate of 21% p.a. However, neither supply was made nor payment was received from the respondent company. Statutory notice was given on 20.06.1995. No reply was received in response to the said statutory notice. Eventually, Petitioner has filed present petition in this court on 6.12.1995. The Petition was admitted on 17.1.1996 and was duly advertised.

. In the reply filed before this court, stand taken on behalf of the respondent company is that the Petitioner company has made payment on its own for which respondent company cannot be made responsible. After going through the pleadings and documents on record, I have no hesitation to take a view that the explanation offered by the respondent company on affidavit is not bona fide. The same is belied by the communication sent by respondent company to the petitioner on 9.5.1994 which acknowledges the liability of the respondent company. As mentioned earlier, the respondent company did not forward any reply in response to the statutory notice. In law therefore, legal presumption arises that respondent company is unable to pay its debts. Besides, from the letter sent by respondent company to the Petitioner dated 9.5.1994 it is seen that the respondent company has stated the fact that it is facing financial difficulty. In addition, it is fairly accepted by the counsel for the respondent company across the bar that certain taking over possession are pending against the respondent company resorted to by the financial institutions. In so far as properties of the respondent company have been put to sale. It is also accepted that the respondent company has

stopped its activities for quite some time almost 4/5 years in the past. In this view of the matter, this is a fit case where petition deserves to be made absolute in terms of Prayer Clause (a).

. Accordingly, Petition made absolute in terms of Prayer Clause (a). Official Liquidator to take possession of the assets and properties of the respondent company and proceed in accordance with law.

(A.M. KHANWILKAR,J.)